EVIDENCE—ENTRIES IN PRIVATE MEMORANDUM.—BURKE V. BAKER, 80 N. E. 11033 (N. Y.).—*Held,* that in an action by executrix for services rendered by her testator, entries in the diaries of testator relating to services alleged to have been rendered defendants were inadmissible.

While such an admission is justified on the ground of necessity, or as best evidence, *Kendall v. Field,* 14 Me. 30; or where made in regular course by deceased clerk, *Bacon v. Vaughn,* 34 Vt. 73; or even where clerk is alive, yet not produced, *Cummings v. Fullam,* 13 Vt. 434, it was distinctly decided in *Lapham v. Kelley,* 35 Vt. 195, on thorough examination of all authorities, that such an entry in a pass-book of like character was not admissible as independent evidence and the rule seems well established that private memoranda made for preserving a knowledge of a fact are never admissible as independent evidence in favor of persons who made them. *Godding v. Orcutt,* 44 Vt. 54; *Lawrence v. Baker,* 5 Wend. 301; *Glover v. Hunnewell,* 6 Pick. 222; *Haven v. Wendall,* 11 N. H. 112; *Story's Confl. of Laws,* sections 526-7.

EVIDENCE—EXPERTS—HYPOTHETICAL QUESTION.—CITY OF CHICAGO V. DIDIER, 81 N. E. 698 (ILL.). Where a medical expert was asked a hypothetical question based upon assumed facts and the assumed truth of testimony of witnesses for the plaintiff, offered at the trial, *held,* that the question was not objectionable in form.

Courts as a rule entertain an aversion to expert testimony, but consider it necessary in many cases. *Tulles v. Rankin,* 6 N. D. 44. The courts have adopted different rules as to what shall constitute a hypothetical question. In *Mayo v. Wright,* 63 Mich. 32, it was said that the question must not contain statements outside of any testimony given previously in the trial, but this was carried farther in *Elgin A. & S. Traction Co. v. Wilson,* 217 Ill. 47, where it was said that a physician could express an opinion upon information gained in the exercise of his professional duties with the patient. Nevertheless, where the question is based upon conflicting testimony, it will not be admitted, *Smith v. Hickenbottom,* 57 Iowa, 733; and it should embody substantially all the facts relating to the subject upon which the question is asked. *Serm v. Southern Ry. Co.,* 108 Mo. 142. Also it may be based upon the hypothesis of all the evidence, or on a hypothesis framed of certain facts assumed to have been proven. *Goutier v. Hartman,* 3 Colo. 53.

EXEMPTIONS—BILL OF—COMPELLING TRIAL JUDGE TO ACT—MANDAMUS.—STATE EX REL. COLUMBUS ST. RY. & LIGHT CO. V. DEUPREE, 81 N. E. 678 (IND.). Where a judge refused to sign a bill of exceptions on the ground that there was no shorthand reporter during the trial, *held,* that mandamus would lie to compel him to act on the bill, and if correct, to sign it.

It is a well settled rule of law, that a judge must sign a bill of exceptions, if it is correct. *State ex rel. Sneed v. Hall,* 3 Coldwell (Tenn.) 255. And if they do not correctly state the truth of the case, it is the duty of the judge, with the aid of counsel, to setttle the bill, *Page v. Colton,* 30 Grattan (Va.) 415; though a judge cannot be compelled to sign a bill of exceptions which he alleges is untrue, *State ex rel. Wittenbrock v. Wickham,* 65 Mo. 634; or one which he believes does not contain the truth, *People ex rel. Vosburgh v. Jamison,* 40 Ill. 93; and the power of determining whether the bill is correct or not, is vested in the judge, *State v. Todd,* 4 Hammond (Ohio) 351, and when the judge refuses to sign because he says it does not state the truth of the case, which the relator traverses, an issue of fact is presented, to be determined upon the evidence, *Collins et al. v. Christian,* 92 Va. 731; but the